

REMARKS

Claim 1 is amended. Claims 2, 4, 12, 14, 15, and 17 have been cancelled. Upon entry of the amendment, claims 1, 3, 5, 6, 13, 16, and 18 are presented for reconsideration by the Examiner.

Claim Rejections 35 U.S.C. §102

Claim 1-5, and 12-14 have been rejected under 35 U.S.C. §102 as being anticipated by United States Patent No. 5,476,093 to Lankinen. The courts have held that "[a] claim is anticipated only if each and every element as set forth in the claim is found . . . in a single prior art reference." Verdegaal Bros. V. Union Oil of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The elements must be shown to be present in the prior art reference either expressly or inherently. Rockwell International Corp. v. United States, 147 F.3d 1358, 1363 (Fed. Cir. 1998); Electro Med System S.A. v. Cooper Life Sciences, 34 F.3d 1048, 1052 (Fed. Cir. 1994).

Rejection of Claim1

Claim 1 has been amended. The Lankinen reference does not disclose a device which includes a piston pump or a gas canister for providing the airflow of repeatable volume and velocity to the drug dosing device. Instead, Lankinen is directed toward a device which requires an "intense" air flow. For example, at column 7, lines 14-55, Lankinen requires that an air flow be intense enough to produce turbulence. Lankinen further states that "[w]ith more intense air flow the pulverization effect of a device as shown in FIGS. 6a-6c can be improved." Lankinen, lines 49-50. Lankinen clearly is not concerned with providing the airflow of repeatable volume and velocity to the drug dosing device. Lankinen clearly discloses a device which provides an uncontrollable blast of air without consideration of repeatable volume or velocity of the air. As such, a proper 35 U.S.C §102 rejection cannot be made since at least these elements are not present in Lankinen.

Rejection of Claim 2, 4, 12, and 14

Claims 2, 4, 12, and 14 have been cancelled without prejudice to later filing. As such, any proper rejection has been obviated.

Rejection of Claim 3

Claim 3 depends directly on claim 1 and is patentable for at least the reasons stated above with regard to claim 1.

Rejection of Claims 5 and 13

Claims 5 and 13 depend either directly or indirectly on claim 1 and are patentable for at least the reasons claim 1 is patentable.

In addition, Lankinen does not disclose a device wherein the chamber is comparable in volume to the cyclone as asserted by the Examiner. Applicants note that column 6, lines 56-58 of the Lankinen reference, as asserted by the Examiner, does not discuss relative volumes of any portions of the Lankinen device. In fact, the Figures in light of the Lankinen disclosure, clearly show that the features identified by the Examiner as the “chamber having a mouthpiece 4” and “the cyclone” are not comparable in volume. For example, the Applicants respectfully direct the Examiners attention to Figures 5b and 7. Figures 5b and 7 clearly show a device wherein the features identified by the Examiner as the “chamber having a mouthpiece 4” and “the cyclone” are not comparable in volume. As such, a proper rejection under 35 U.S.C. 102 may not properly be made for at least this additional reason.

Claimed Invention is Non-Obvious Under a Proper 35 U.S.C. §103 Analysis

The claimed invention is additionally non-obvious with regard to Lankinen since there is at the minimum no suggestion or motivation present in the teaching or disclosure of Lankinen, or within the knowledge of one of ordinary skill in the art as evidenced by, at least, the references cited in the Office Action, to do what the Applicants have done in the claimed invention. For example, at a minimum Lankinen does not teach or suggest a device which includes a piston pump or a gas canister for providing the airflow of

repeatable volume and velocity to the drug dosing device. In addition the Lankinen reference does not teach or suggest a device wherein the chamber is comparable in volume to the cyclone. The Applicants note that as thoroughly discussed in a recent court holding:

“...the essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) (“the central question is whether there is reason to combine [the] references,” a question of fact drawing on the Graham factors).” In re Lee, 61 USPQ2d, 1430 (Fed. Cir. 2002)

Such a rigorous examination required by law clearly would find the claimed invention non-obvious based on at least a study of the problem to be solved by the Applicants, and the functionality of the claimed invention.

Rejections Under 35 U.S.C. §103

To properly establish a *prima facie* case of obviousness, the Examiner must meet three basic criteria. First, there must some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2143.

Claims 6 and 15-18 has been rejected under 35 U.S.C. 103 as “being unpatentable over Lankinen in view of Patton et al. (USPT 5,458,135)”. The Examiner has asserted that Lankinen “teaches the inhaler” with the exception of having a 300ml chamber. The Examiner states that Patton et al. “teaches an inhaler with a common chamber volume of

around 300ml" and that "it would have been obvious to one having ordinary skill in the art" to "make the chamber of Lankinen around 300ml.

Rejection of Claims 15 and 17

Claims 15 and 17 have been cancelled without prejudice to later filing. As such, any proper rejection has been obviated.


Rejection of Claims 16 and 18

The rejection of claims 16 and 18 is improper for at least the reason that the Lankinen reference does not disclose a piston pump or a gas canister for providing the airflow of repeatable volume and velocity to the drug dosing device. In addition the Lankinen reference does not teach or suggest a device wherein the chamber is comparable in volume to the cyclone. As such, the cited references when combined do not teach or suggest all the claim limitations, and a proper 35 U.S.C §103 rejection cannot be made.

In summary, Applicants have addressed each of the rejections within the present Office Action by the above Remarks. It is believed the Application now stands in condition for allowance and a prompt favorable action thereon is earnestly solicited.

Respectfully submitted,

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Enclosures

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